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IN THE
Supreme Court of the United States

OCTOBER TERM, 1969

No. 9

NACIREMA OPERATING CO., INC. AND LIBERTY
MUTUAL INSURANCE COMPANY,
Petitioners,

v.

WILLIAM H. JOHNSON, JULIA T. KLOSEK,
AND ALBERT AVERY,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONERS

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September 10, 1969

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**Discussion of Recent Decision (*Rodrigue v. Aetna
Casualty & Surety Co.*, 395 U.S. 352)**

This cause was argued on March 25, 1969, and reargument has been ordered by the Court.

Since the initial argument the Court's decision has been announced in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969), which held that Congress had adopted state law, not federal law, for civil actions involving wrongful deaths of workers employed on artificial island drilling rigs located on the outer continental shelf.¹

¹ Federal law, the Death on the High Seas Act, c. 111, 41 Stat. 537, 46 U.S.C. §§ 761-768, would have limited recovery to pecuniary loss. State law, Article 2315 of the Louisiana Revised Civil Code, which was held to have been adopted as federal law for such cases by virtue of the Outer Continental Shelf Lands Act, c. 345, 67 Stat. 462, 43 U.S.C. §§ 1331, *et seq.*, was more generous to the plaintiffs.

Although the Longshoremen's and Harbor Workers' Compensation Act was not directly involved in *Rodrigue*,² the traditional principle that pier injuries are divorced from admiralty jurisdiction (absent a statute) was clearly recognized by the unanimous opinion of the Court. In concluding that the Death on the High Seas Act did not apply to *Rodrigue*-type accidents, Mr. Justice White succinctly stated that "the accidents had no more connection with the ordinary stuff of admiralty *than do accidents on piers*,"³ and "would be no more under admiralty jurisdiction than accidents on a wharf *located above navigable waters*"⁴ (emphasis supplied). We think that this Court's recognition of the sharp line which has historically been drawn between piers and other land-based injuries, and admiralty jurisdiction, as is manifest in the above language, emphasizes the fact that Congress understood and intended that pier injuries were beyond the coverage of the Longshoremen's Act.

Respectfully submitted,

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September 10, 1969

² It is noteworthy, however, that in Section 4(c) of the Outer Continental Shelf Lands Act, c. 345, 67 Stat. 462, 43 U.S.C. 1333(c), Congress expressly extended the benefits of the Longshoremen's Act seaward to encompass workers engaged in the natural resources effort on the continental shelf. Conversely, although it has thus expressly extended the Longshoremen's Act seaward and has applied the Act to other areas such as defense bases, Congress has never extended the Act ashore so as to include accidents on piers.

³ 395 U.S. at 360.

⁴ 395 U.S. at 366.